

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN POTTS,

Petitioner,

v.

DANNY SAMUEL,

Respondent.

Case No. 1:20-cv-01236-JLT-HBK (HC)

ORDER GRANTING PETITIONER'S
MOTIONS TO PRODUCE MARSDEN
HEARING TRANSCRIPT

(Doc. Nos. 66, 68)

Petitioner Kevin Potts, a state prisoner proceeding pro se, initiated this action by filing a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1). Petitioner is proceeding on his first amended petition. (Doc. No. 19). The matter is currently stayed in order for Petitioner to exhaust his claim that his plea was involuntary. (Doc. No. 55). Before the Court is Petitioner's "Motion to Produce Marsden Hearing Transcripts" and the seemingly identical "Request for Ruling on Marsden Hearing Transcripts." (Doc. Nos. 66, 68).

Respondent has filed no opposition to these particular requests aside from a statement in the fifth status report that it "appears Petitioner has requested the superior court provide him with confidential documents which are unavailable to Respondent." (Doc. No. 69 at 2). Respondent has also indicated in several previous status reports that the requested documents are confidential and "cannot be sent to counsel for Respondent," but "Petitioner is free to procure and submit documents that are ordered confidential for his benefit if he so chooses." (Doc. No. 62 at 2).

1 However, Petitioner claims that on March 15, 2022, he did file a request for a transcript of
2 the January 27, 2022 *Marsden* hearing; but he has not received the transcript of the hearing “as
3 requested.” (Doc. No. 68). Moreover, as noted by Petitioner, in the Court’s October 29, 2021
4 order granting Petitioner’s motion to stay, the Court also ordered Respondent to lodge any
5 relevant documents related to Petitioner’s *Marsden* motion before the Fresno County Superior
6 Court. (Doc. No. 55).

7 While the Court recognizes the confidential nature of the requested records, in light of the
8 undersigned’s October 29, 2021 order and the potential relevance of the *Marsden* hearing
9 transcript, the Court grants Petitioner’s motion and orders Respondent to lodge the January 27,
10 2022 *Marsden* hearing transcript ***under seal*** with the Court pursuant to Rule 5(c) of the Rules
11 Governing Section 2254 Cases, and to provide a copy to Petitioner.

12 Accordingly, it is **ORDERED**:

13 1. Petitioner’s Motions to Produce Marsden Hearing Transcripts (Doc. Nos. 66, 68)
14 are **GRANTED**.

15 2. Respondent is ordered to file the January 27, 2022 *Marsden* hearing transcript with
16 the Court under seal, and provide a copy to Petitioner. If the Respondent is unable to obtain a
17 copy of the January 27, 2022 *Marsden* hearing transcript from the Superior Court, Respondent
18 shall file a notice with the Court to advise the Court of the state procedure for Petitioner to obtain
19 a copy.

20
21 Dated: July 11, 2022


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE